

Boxborough Board of Appeals
Meeting Minutes
July 31, 2012

Members present: Tom Gorman, Chris Habersaat, Kristin Hilberg, Michael Toups, Lonnie Weil, and Karen Warner.

Also present: Elizabeth Hughes, Town Planner.

Chairman Tom Gorman called the meeting to order at 7:20 pm.

Upon motion duly made by Tom and seconded by Lonnie, the Board voted unanimously (5 – 0) to approve the minutes of July 10, 2012.

The Board reviewed the request from Dr. Timothy Foster for a two year extension of the Shepherd Veterinary clinic Special Permit. Due to the economy he has not started expansion. Upon motion duly made by Tom and seconded by Chris, the Board voted unanimously (5 – 0) to approve a one year extension to October 19, 2013.

At 7:30 the Board reconvened the hearing for 94 – 100 Chester Road on the Moran application for a Variance for a longstanding setback nonconformity to a single family dwelling and a Special Permit for two reduced frontage lots.

Attorney Kathleen Vorce, representing the Morans, gave an opening address acknowledging the abutters opposed to the proposed changes to the Moran property. She discussed some of the abutters' concerns including impact on the wetlands, reduced frontage lot access and setback concerns. While their concerns are real, Ms. Vorce does not find them legally compelling.

Ms. Vorce then presented the Board with a copy of Ch. 40a Section 7 which essentially says that there is a ten-year sunset clause for pre-existing, non-conforming structures. Chris stated that the statute doesn't apply in this circumstance because no complaint was lodged against the Morans. Instead, the fact is that the Morans are asking for a Special Permit to do something new with the property. Tom concurred.

Ms. Vorce questioned the Planning Board memo and felt that the only issue addressed was "no compelling reason" for the Special Permit and that such a decision was capricious, arbitrary, and whimsical. Ms. Vorce explained that she felt that the Planning Board was incorrect in that no analysis of the criteria for the special permit was ever provided. Tom noted that the Planning Board's memo was only a recommendation to the Board.

Lonnie asked to explain how it is in the best interest of the town per Section 5003 of the bylaw for Ms. Vorce to use a Special Permit to create one 5 acre house lot in perpetuity as opposed to the possible development of subdivision. Ms. Vorce told the Board that they are being asked for two (2) reduced frontage lots and that it's still possible for the Morans to come back with an application for a single reduced frontage lot. Ms. Vorce has expectations that the Board could deny in part or approve in part and perhaps condition could address the question of single as opposed to two reduced frontage lots. Chris suggested that a subdivision is hypothetical at this time because there is no subdivision application on the table.

Attorney Anthony Copani spoke for Dr. David and Kim Kahan, direct abutters of the property. He has been recently retained and asked the Board to consider the following factors:

- There is no footprint for location of a structure, a concern of the Kahan's.
- The frontage requirement of the Bylaw allows fire, police and emergency vehicles to have proper
- Access ensuring the safety and welfare of the community.
- There is insufficient evidence of whether a future building site will comply with the Zoning
- Bylaw.

Mr. Copani believes that without enough upland a subdivision is illusory.

Mr. Copani further stated that the Kahans find the following disturbing:

- The location of the house is not known. Where will there be a wetlands crossing?
- The length of the driveway of 600 to 700 feet is a concern for safety.
- There is confusion about the second lot. Do the Morans own the lot or have a Purchase and Sale for lot D in order to have access to the property?

Mr. Copani believes that this lack of information means the Board can not make a good decision.

Ms. Vorce responded that regardless of the home's location it will be within the bylaw setback requirements thus ensuring that the Kahans will not be intruded upon any more than their current neighbor. Ms. Vorce believes the Planning Board has approved longer driveways in town. She also stated the Mr. Flannery has signed a purchase and sale for Parcel D.

Elizabeth Hughes, Town Planner stated that neither the Planning Board nor the Conservation Commission has reviewed any plans for the development of these two lots. Furthermore, the Town does not have a driveway bylaw limiting the length of private driveways, however, the Subdivision Rules & Regulations limit the length of a subdivision road to 500 feet.

At 8:25 upon motion duly made by Tom and seconded by Lonnie, the Board voted unanimously to close the hearing.

Tom opened the discussion regarding the **Variance**. He stated that the requirements of the statute and as developed in case law appear to make granting a Variance not possible in this case.

Chris stated that the request does not meet the standards laid out in the statute and case law. The Board does not have the discretion to be able to grant a Variance in this situation, especially where the nonconformity was self-created.

Tom moved to deny the Variance seeking to correct a longstanding setback nonconformity for the single family dwelling because the request does not meet the statutory standards and findings under Section 9101(2) required for a Variance. The motion was seconded by Karen. Chris referenced case law stating that variances are to be granted sparingly, and are not to be granted to remedy deficiencies in frontage area and self-created hardships. The Board voted unanimously to deny the requested variance (5-0).

Tom opened the discussion of **Special Permits** and best interests of the Town. A gift to the Town was not a compelling reason for approval in another matter, for example. Impact on the neighborhood should be considered.

Chris questioned if intensity regulations are being met. And if so, then Board can proceed to the question of the best interest of the Town.

Kristin voiced her opinion that it would be a benefit to the Town to have new housing, growth, and employment. Lonnie opined that he did not see perceived benefits to the Town by deviating from the Bylaw's frontage requirements. Chris expressed struggling with how this is in the best interest of the Town and also in the best interest of the abutters.

Michael saw the benefit of need for new growth. Tom questioned if this application is in the best interest of the Town.

Chris needed to understand any adverse effects on the neighborhood.

Michael expressed that at some point the Town thought it was a good idea to provide access to parcel per previous subdivision plans. It didn't actualize, but it was a consideration.

The Board took a brief break from 9:00 until 9:07. No discussions about the pending applications were had between members during this time.

Upon returning the Board revoted the Variance as an "administrative correction" since all five full members of the Board were present throughout the proceedings and the previous vote had an alternate member, who did not vote, seconding the motion. Tom moved to deny the Variance seeking to correct a longstanding setback nonconformity for the single family dwelling because the request does not meet the statutory standards and findings under Section 9101(2) required for a Variance. The motion was seconded by Chris, who referenced case law stating that variances are to be granted sparingly, and are not to be granted to remedy deficiencies in frontage area and self created hardships. The Board voted unanimously to deny the requested variance (5-0).

Tom moved to deny the Reduced Frontage Lot Special Permit because, among other things, the applicant failed to overcome the presumption that the intensity regulation of Section 5000 will serve the best interests of the Town and the Board was unable to find pursuant to Section 9204 of the Bylaw that the two reduced frontage lots will not have adverse effects which outweigh their benefits on the environment, the town, the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The motion was seconded by Chris. Tom called for a vote. The vote was as follows: 3 in favor of the denial of the request for a Special Permit (Gorman, Habersaat, Weil) and 2 against denial (Hilberg, Toups).

Upon motion duly made by Tom and seconded by Chris, the Board voted to adjourn at 9:25 pm.

On behalf of the Zoning Board of Appeals,

Tom Gorman
Approved

6/4/13
Date